

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1370**

**Introduced by Assembly Member Yee**

February 21, 2003

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An act to amend ~~Sections 4094 and 4094.1~~ *Section 4094* of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1370, as amended, Yee. Mental health: community treatment facilities: ~~program standards~~; seclusion and restraints.

Under existing law, community treatment facilities are residential facilities that are licensed by the State Department of Social Services *and the State Department of Mental Health* to provide *residential care and* mental health treatment services to children in a group setting, and that have the capacity to provide secure containment.

Existing law requires the State Department of Mental Health to adopt regulations establishing program standards for any facility licensed as a community treatment facility. ~~Under existing law, these~~ *These* regulations are required to include, ~~but not be limited to,~~ *program standards with respect to the placement of children with severe emotional disturbances,* and to include standards for treatment staffing and for the use of psychotropic medication, discipline, and restraints ~~in community treatment facilities.~~

This bill would, ~~for a specified period of time until January 1, 2007,~~ prohibit the department from adopting and enforcing regulations regarding the use of emergency interventions in community treatment facilities *that do not use mechanical restraint* that are in addition to, or

more stringent than, specified regulations applicable to the use of emergency interventions in group homes. The bill would also prohibit the department from requiring 24-hour onsite nursing staff at community treatment facilities that use emergency *physical* restraints, but would require these facilities to retain at least one full-time, *or full-time equivalent*, registered nurse on staff, to maintain other nursing staff to be available on call, and to have present at all times at least one staff member who is trained in providing first aid and other emergency services. This bill would also authorize the department to adopt emergency regulations *to implement these provisions*.

~~Existing law requires the State Department of Social Services and the State Department of Mental Health to jointly develop protocols for the oversight of community treatment facilities. Existing law also requires that these departments undertake specified actions with respect to training and education of facility management and staff, facility inspections, and reporting requirements.~~

~~This bill would provide that these requirements apply until they are superseded by another statute or by regulation. This bill would state the intent of the Legislature that the State Department of Social Services and the State Department of Mental Health, in consultation with various stakeholders, review existing reporting and training requirements related to the use of seclusion and restraints, as specified.~~

~~Existing law also requires the State Department of Mental Health and the State Department of Social Services to conduct bimonthly visits to licensed community treatment facilities to monitor operational progress and to provide technical assistance.~~

~~This bill would instead require these visits every 6 months.~~

~~Existing law requires the appropriate department to centrally review any certification or licensure deficiency before issuing a notice of the citation to the community care facility.~~

~~This bill would instead require both the State Department of Social Services and the State Department of Mental Health to centrally review the certification or licensing deficiency when licensing and certification field staff disagree on whether to issue a citation.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.



*The people of the State of California do enact as follows:*

1     ~~SECTION 1. The Legislature finds and declares all of the~~  
2     ~~following:~~

3     ~~(a) The use of emergency interventions in out-of-home care~~  
4     ~~facilities is required at times to restrain, or provide for the~~  
5     ~~seclusion of, minors who are at risk for harming themselves, other~~  
6     ~~minors who are residents of these facilities, or staff members of~~  
7     ~~these facilities. In foster care group homes, the use of restraints~~  
8     ~~may include physically restraining a minor or providing a~~  
9     ~~monitored “timeout” in an unlocked seclusion room.~~

10    ~~(b) Existing regulations governing the use of emergency~~  
11    ~~interventions adopted by the State Department of Mental Health~~  
12    ~~require community treatment facilities that use emergency~~  
13    ~~interventions to have 24-hour, onsite licensed nursing staff to~~  
14    ~~monitor the use of seclusion and restraints. Foster care group~~  
15    ~~homes are not required to maintain 24-hour licensed nursing~~  
16    ~~coverage by the regulations applicable to the use of emergency~~  
17    ~~intervention in group homes, as defined on January 1, 2002, in~~  
18    ~~Subchapter 3 (commencing with Section 84300) of Chapter 5 of~~  
19    ~~Division 6 of Title 22 of the California Code of Regulations. Yet,~~  
20    ~~community treatment facilities are similar, in program content and~~  
21    ~~client population, to rate classification levels 13 and 14 foster care~~  
22    ~~group homes.~~

23    ~~(c) Consistent with the goal of placing youth in foster care in~~  
24    ~~the least restrictive environment possible, community treatment~~  
25    ~~facilities were established to provide an alternative to placement~~  
26    ~~in psychiatric institutions, state hospitals, or out-of-state facilities.~~

27    ~~(d) The inconsistency in regulations governing the use of~~  
28    ~~emergency interventions in group homes and in community~~  
29    ~~treatment facilities creates a disincentive for small,~~  
30    ~~community-based providers to treat severely emotionally~~  
31    ~~disturbed youth in community treatment facility settings.~~

32    ~~(e) As directed by Senate Resolution No. 31 of the 2001-02~~  
33    ~~Regular Session, the Senate Select Committee on Developmental~~  
34    ~~Disabilities and Mental Health will be conducting hearings~~  
35    ~~regarding the standards, reporting practices, and oversight of the~~  
36    ~~use of seclusion and restraints in psychiatric settings in California.~~  
37    ~~The select committee has been directed to submit a report to the~~  
38    ~~Legislature by March 1, 2003, regarding its findings and~~

1 ~~recommendations, including recommendations on how to develop~~  
2 ~~best practices and reduce harm to staff and clients in group homes~~  
3 ~~and psychiatric facilities.~~

4 ~~(f) It is the intent of the Legislature to enact legislation to~~  
5 ~~temporarily correct the inconsistency in how the use of emergency~~  
6 ~~interventions is regulated in community treatment facilities,~~  
7 ~~including group homes, until comprehensive state policies~~  
8 ~~regarding the use of emergency interventions are developed,~~  
9 ~~proposed, and enacted by the Legislature.~~

10 ~~SEC. 2.—~~

11 *SECTION 1.* Section 4094 of the Welfare and Institutions  
12 Code is amended to read:

13 4094. (a) The State Department of Mental Health shall  
14 establish, by regulations adopted at the earliest possible date, but  
15 no later than December 31, 1994, program standards for any  
16 facility licensed as a community treatment facility. This section  
17 shall apply only to community treatment facilities described in this  
18 subdivision.

19 (b) A certification of compliance issued by the State  
20 Department of Mental Health shall be a condition of licensure for  
21 the community treatment facility by the State Department of  
22 Social Services. The department may, upon the request of a county,  
23 delegate the certification and supervision of a community  
24 treatment facility to the county department of mental health.

25 (c) The State Department of Mental Health shall adopt  
26 regulations to include, but not be limited to, the following:

27 (1) Procedures by which the Director of Mental Health shall  
28 certify that a facility requesting licensure as a community  
29 treatment facility pursuant to Section 1502 of the Health and  
30 Safety Code is in compliance with program standards established  
31 pursuant to this section.

32 (2) Procedures by which the Director of Mental Health shall  
33 deny a certification to a facility or decertify a facility that is  
34 licensed as a community treatment facility pursuant to Section  
35 1502 of the Health and Safety Code, but no longer complying with  
36 program standards established pursuant to this section, in  
37 accordance with Chapter 5 (commencing with Section 11500) of  
38 Part 1 of Division 3 of Title 2 of the Government Code.

1 (3) Provisions for site visits by the State Department of Mental  
2 Health for the purpose of reviewing a facility's compliance with  
3 program standards established pursuant to this section.

4 (4) Provisions for the community care licensing staff of the  
5 State Department of Social Services to report to the State  
6 Department of Mental Health when there is reasonable cause to  
7 believe that a community treatment facility is not in compliance  
8 with program standards established pursuant to this section.

9 (5) Provisions for the State Department of Mental Health to  
10 provide consultation and documentation to the State Department  
11 of Social Services in any administrative proceeding regarding  
12 denial, suspension, or revocation of a community treatment  
13 facility license.

14 (d) The standards adopted by regulations pursuant to  
15 subdivision (a) shall include, but not be limited to, standards for  
16 treatment staffing and for the use of psychotropic medication,  
17 discipline, and restraints in the facilities. The standards shall also  
18 meet the requirements of Section 4094.5.

19 ~~(e) Pending the enactment of legislation resulting from the~~  
20 ~~report on seclusion and restraint to be completed by the Senate~~  
21 ~~Select Committee on Developmental Disabilities and Mental~~  
22 ~~Health pursuant to Senate Resolution No. 31 of the 2001-02~~  
23 ~~Regular Session, or until January 1, 2005, whichever occurs first,~~  
24 ~~Until January 1, 2007, all of the following are applicable:~~

25 (1) For purposes of the use of emergency interventions in any  
26 community treatment facility *that does not use mechanical*  
27 *restraint*, the State Department of Mental Health ~~shall~~ *may* not  
28 adopt or enforce regulations that are in addition to, or more  
29 stringent than, the regulations applicable to the use of emergency  
30 interventions in group homes, as ~~defined~~ *provided for* on January  
31 1, 2002, in Subchapter 3 (commencing with Section 84300) of  
32 Title 22 of the California Code of Regulations.

33 (2) Notwithstanding paragraph (1):

34 (A) A community treatment facility that uses emergency  
35 interventions *but does not use mechanical restraint* shall not be  
36 required by the State Department of Mental Health to have 24-hour  
37 onsite licensed nursing staff, but ~~must~~ *shall* retain at least one  
38 full-time, *or full-time equivalent*, registered nurse on staff.

39 (B) Other nursing staff shall be available on call to provide  
40 nursing services, when necessary, within one hour.

(C) Nursing services shall include, but not be limited to, conducting physical assessments, administering medication, monitoring for side effects of medication, taking vital signs, and providing nursing guidance for observation of children to other facility staff. *Nothing in this section shall be interpreted to preclude other staff from performing duties in group homes, as specified in Chapter 5, (commencing with Section 84000) of Division 6 of Title 22 of the California Code of Regulations.*

(D) At least one staff member who is trained in first aid, and cardiopulmonary resuscitation, and ~~professional assault response training (PARTS) or other similar training program in emergency intervention techniques and methods approved by the Community Care Licensing Division of the State Department of Social Services,~~ shall be present at all times.

(3) The State Department of Mental Health may adopt emergency regulations as necessary to implement this subdivision. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be exempt from review by the Office of Administrative Law and shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

(f) During the initial public comment period for the adoption of the regulations required by this section, the community care facility licensing regulations proposed by the State Department of Social Services and the program standards proposed by the State Department of Mental Health shall be presented simultaneously.

(g) A minor shall be admitted to a community treatment facility only if the requirements of Section 4094.5 and either of the following conditions is met:

(1) The minor is within the jurisdiction of the juvenile court, and has made voluntary application for mental health services pursuant to Section 6552.

(2) Informed consent is given by a parent, guardian, conservator, or other person having custody of the minor.

(h) Any minor admitted to a community treatment facility shall have the same due process rights afforded to a minor who may be admitted to a state hospital, pursuant to the holding in *In re Roger S.* (1977) 19 Cal. 3d 921. Minors who are wards or dependents of the court and to whom this subdivision applies shall be afforded due process in accordance with Section 6552 and related case law, including *In re Michael E.* (1975) 15 Cal.3d 183. Regulations adopted pursuant to Section 4094 shall specify the procedures for ensuring these rights, including provisions for notification of rights and the time and place of hearings.

(i) Notwithstanding Section 13340 of the Government Code, the sum of forty-five thousand dollars (\$45,000) is hereby appropriated annually from the General Fund to the State Department of Mental Health for one personnel year to carry out the provisions of this section.

~~SEC. 3. Section 4094.1 of the Welfare and Institutions Code is amended to read:~~

~~4094.1. (a) (1) The department and the State Department of Social Services, in consultation with community treatment providers, local mental health departments, and county welfare departments, shall develop joint protocols for the oversight of community treatment facilities.~~

~~(2) Subject to subdivision (b), until the protocols and regulatory changes required by paragraph (1) are implemented, entities operating community treatment facilities shall comply with the current reporting requirements and other procedural and administrative mandates established in State Department of Mental Health regulations governing community treatment facilities.~~

~~(b) In accordance with all of the following, the State Department of Social Services shall modify existing regulations governing reporting requirements and other procedural and administrative mandates, to take into account the seriousness and frequency of behaviors that are likely to be exhibited by children placed in community treatment facilities. The modifications required by this subdivision shall apply for the entire 2000-01 fiscal year and thereafter until they are superseded by the subsequent enactment of statutory or regulatory changes.~~

~~(1) In order to ensure adequate oversight and protection of children in community treatment facilities, it is the intent of the~~



~~Legislature that the State Department of Mental Health and the State Department of Social Services, in consultation with community treatment facility providers and stakeholders, review existing reporting requirements related to the use of seclusion and restraints in community treatment facilities to ensure that they are clear and consistent between community treatment facility providers and enforcement agencies in order to collect data on, and accurately report on the use and usefulness of, seclusion and restraints in community treatment facilities.~~

~~(2) Notwithstanding existing regulations, the State Department of Social Services shall issue alternative training and education requirements for community treatment facility managers and staff, which shall be developed in consultation with the State Department of Mental Health, patients' rights advocates, local mental health departments, county welfare offices, and providers.~~

~~(3) In order to ensure adequate oversight and protection of children in community treatment facilities, it is the intent of the Legislature that the State Department of Mental Health and the State Department of Social Services, in consultation with community treatment facility providers and stakeholders, review existing training requirements related to the use of seclusion and restraints on children in community treatment facilities to ensure that the training requirements protect and promote the health of those children. Training requirements should include training in the use of interventions for reducing the risk of death or other adverse outcomes resulting from prone containment. Training requirements should also include a requirement that an observer of every prone containment restraint situation rapidly move a patient into a safer, face up position as quickly as possible if any signs of distress are detected. In addition, the training requirements should include training in the avoidance of direct pressure to the patient's neck or chest, and consideration of medications and changes in cardiopulmonary functioning, all of which should be stressed as critical components of a training protocol for the use of seclusion and restraints.~~

~~(4) The department and the State Department of Social Services shall conduct joint visits every six months to each licensed community treatment facility to monitor operational progress and to provide technical assistance.~~



1     ~~(5) When the licensing and certification field staff disagree on~~  
2     ~~whether to issue a citation, both the State Department of Social~~  
3     ~~Services and the department shall centrally review the certification~~  
4     ~~or licensing deficiency before the citation is issued.~~

5     ~~(6) A community treatment facility shall be exempt from~~  
6     ~~reporting any occurrence of the use of restraints to the State~~  
7     ~~Department of Social Services, unless physical injury is sustained~~  
8     ~~or unconsciousness or other medical conditions arise from the~~  
9     ~~restraint. All other reporting requirements shall apply.~~

